THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18971 of 2005

06.9.2005

Between:

Kottapalli Rama mohana Rao, S/o. late Raghavayya,

Mohini Complex, Main Road, Gajuwada, Visakhapatnam District.

… Petitioner

AND

The Gajuwaka Municipality, rep. By its Commissioner,

Visakhapatnam District.

… Respondent

ORDER:

The petitioner's wife is statedly the owner of plot No.4 admeasuring 793 Sq.yards in R.S.No.40/20 of Gajuwaka. She allegedly obtained necessary building permission from Gram Panchayat, Gajuwaka in 1999 and constructed a house. It is alleged that since then the petitioner and his wife are living in the said house. It appears that the petitioner's wife expired in 2000 bequeathing the property in favour of the petitioner. After the death of the petitioner's wife on 17.10.2000, the property was mutated by Gajuwaka Municipality in the name of the petitioner. Be that as it is, the respondent issued a notice dated 18.8.2005 purporting to be one under Section 228 of A.P. Municipalities Act, 1965 (the Act, for brevity) informing the petitioner that there are unauthorized constructions in the premises and he was asked to remove the unauthorized structures in seven days. This is assailed in the writ petition.

Heard the learned Counsel for the petitioner and learned Standing Counsel for Gajuwaka Municipality. By reading the impugned notice/order, it is not possible to definitely say whether it is a provisional order under subsection (1) of Section 228 of the Act or confirmatory order under subsection (3) of Section 228 of the Act. In either case, the petitioner was not issued any notice. Therefore, instead of keeping the writ petition pending, it would be in the interest of the petitioner as well as the Municipality to dispose of the matter at the admission stage.

Accordingly, liberty is given to the petitioner to submit an explanation to the impugned notice treating the same as a provisional order under subsection (1) of Section 228 of the Act within a period of two weeks from today. As and when such

explanation is submitted, the respondent shall consider the same and pass appropriate orders within a week thereafter. Till such exercise is completed, the petitioner cannot be deprived of his right to his property.

The writ petition, with the above observations and directions, is disposed of. No costs.

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(**V.V.S.RAO,J**)

September 06, 2005.

NOTE:

Issue order copy in

Two days.

(B/o)

YS